HON'BLE SRI JUSTICE GHULAM MOHAMMED

W.P.No.23843 of 1996

ORDER:

The petition is filed by Andhra Pradesh State Road Transport Corporation seeking writ of certiorari by calling for the record relating to award made in I.D.No.482 of 1989 dated
05-11-1993 on the file of Labour Court, Godavarikhani and to quash the same as illegal and arbitrary.

The facts necessary for disposal of the writ petition are that the first respondent herein was working as Conductor and during the course of duty, he had not issued the tickets after collecting the fare from the passengers since Senior Traffic Inspector had advised the conductor not to issue tickets. There was special bus service carrying the relief material along with K.Subba Rao (S.T.I.) and other staff to remove the bus that was held up at Vinayakapuram and after completing the work and returning to Khammam, 20 passengers boarded the bus on the way. It was averred that S.T.I. had taken Rs.30/- from the cash bag of the conductor for removing the vehicle from the canal and there was no receipt or voucher for the amount and S.T.I. had asked him not to issue tickets to recoup the amount and S.T.I. being the superior officer, the conductor had not issued the tickets. The first respondent–workman is alleged to have committed certain misconduct and the charges were framed and the domestic enquiry was conducted and the workman had been awarded the punishment of removal from service. Aggrieved thereby, the workman raised I.D.No.482 of 1989 before the Labour Court, Godavarikhani. The Labour Court after considering the evidence on record ordered reinstatement of first respondent into service with partial back wages. Hence, this writ petition by the Corporation.

The first respondent filed counter-affidavit denying that he failed to issue tickets despite collecting the fare from those who boarded the special service bus. He mainly contended that he did not issue tickets to the passengers as per the instructions of Supervisor as he was conducting the special service bus on that day. The Chief Inspector submitted a report holding that the S.T.I. was responsible for the alleged misconduct. Subsequently, the charge-sheet was issued and domestic enquiry ordered. The first respondent alleges that the enquiry was conducted without considering his explanation and without examining any witness and the Enquiry Officer submitted the report finding him guilty of the charges. The workman was removed from service after issuing final show cause notice and considering his explanation.

Heard learned standing counsel for the parties and perused the record.

Learned standing counsel for the respondent Corporation contended that as against K.Subba Rao, the enquiry was conducted and he was removed from service and questioning the removal, he raised I.D. before the Labour Court, which was also dismissed upholding the order of removal passed by the disciplinary authority. Learned standing counsel further contended that the charges against the first respondent workman were proved as admittedly he collected the fare from the passengers, but did not issue tickets merely on the ground that S.T.I. instructed him to do so, therefore the first respondent is liable to be removed from service without any benefit.

A reading of the counter-affidavit filed by the first respondent reveals that he did not issue tickets on the advice of the Supervisor, which shows that he had admitted non-issuance of tickets after collecting the fare. The conduct of the first respondent in collecting the fare and not issuing the tickets itself is misconduct that too on the advice of the Senior Traffic Inspector. The non-issuance of tickets is only due to the

Supervisor or otherwise, he would have issued the tickets.

Learned standing counsel for the Corporation had produced a copy of the award dated 06-02-1991 in I.D.No.164 of 1987 on the file of Labour Court, Warangal, wherein the enquiry held against the Senior Traffic Inspector who advised the first respondent herein not to issue tickets when he had collected the fare and the punishment of the removal of the said Inspector from service were upheld and thus, he was guilty of giving wrong instructions which was acted upon by the conductor. In the instant case, the Labour Court found that the Conductor acted on the instructions of the superior officer and did not issue tickets to the passengers and petty amount is involved in the case and the conductor was in a helpless position. Thus, the conductor did not have any mala fide intention to cause loss to the Corporation. In the above circumstances, the Labour Court directed reinstatement of the first respondent into service, which is just and reasonable and is therefore confirmed.

However, the Labour court had granted partial

back wages to the first respondent conductor. In this connection, it is appropriate to refer to the decision of the Supreme Court in UPSRTC Vs. MAHENDRA NATH TIWARI and the relevant portion reads as under:

> "It is a misconception to consider that the amount involved in an offence of this nature has a material bearing, while considering whether there has been misconduct on the part of an employee. It may be relevant in a criminal prosecution when considering the quantum of punishment to be imposed. When a person like the conductor of a bus, who has the obligation to make proper collection of the charges from the passengers on issuing tickets to them, is found to have passengers in the bus, even if it be only one, to whom he had not issued a ticket, it clearly amounts to clear violation of the duty imposed on him. It is really a breach of duty cast on the conductor who is working on behalf of the employer. Whether one passenger or ten passengers, it would make no difference in principle in the absence of any explanation in that behalf. It was simply the case of a conductor who had violated the Regulations or the terms of his employment and had betrayed the employer, which in any event is a misconduct justifying a dismissal."

The facts dealt by the Supreme Court are quite different from the case on hand. In the instant, the Supervisor had directed the Conductor not to issue the tickets to the passengers when the Conductor had collected the fare and the Supervisor was found guilty of the misconduct and subsequently, removed from service after conducting the enquiry and giving him reasonable opportunity, and the same was upheld by the Labour Court. Having regard to the peculiar facts and circumstances of the case particularly the fact that the petitioner has not worked for the Corporation during the relevant period and practically not on the rolls of the Corporation, I am of the view that the first respondent is not entitled to continuity of service and also not entitled to back wages for the period he is out of employment. The award of the Labour Court is accordingly modified.

The writ petition is allowed to extent indicated above. No order as to costs.

16-02-2006

bsc

HON'BLE SRI JUSTICE GHULAM MOHAMMED

W.P.No.23843 of 1996

16-02-2006

Between:

APSRTC rep. by its Regional Manager,

Kakatiya region, Karimnagar and another.

… Petitioners

and

R.Koteshwar Rao and another

…Respondents